TAN SRI DATUK IBRAHIM MOHAMED A

v.

LEONG TUCK ONN & ANOR

HIGH COURT MALAYA, KUALA LUMPUR B
HASNAH MOHAMMED HASHIM JC
[SUIT NO: D22-1162-2004]
14 FEBRUARY 2012

LEGAL PROFESSION: *Solicitors - Duty of care - Failure to exercise due skill and diligence expected of an advocate and solicitor - Whether solicitor warned client about risks involved before execution of documents - Whether solicitors are in a better position to assess and evaluate the gravity or remoteness of risk involved in a particular transaction - Client suffered loss due to solicitor's failure to use proper care - Whether liable in damages - Whether breached duty of care to client* C D

LEGAL PROFESSION: *Duty to client - Breach of duty of care - Failure to exercise due skill and diligence expected of an advocate and solicitor - Whether solicitor warned client about risks involved before execution of documents - Whether solicitors are in a better position to assess and evaluate the gravity or remoteness of risk involved in a particular transaction - Client suffered loss due to solicitor's failure to use proper care - Whether liable in damages - Whether breached duty of care to client* E F

LIMITATION: *Accrual of cause of action - Action against solicitor for breach of duty of care - Failure to exercise due skill and diligence expected of an advocate and solicitor - Allegation of - Loss suffered by plaintiff in 1995 and suit filed nine years later - Whether plaintiff's claim time-barred* G

The plaintiff, Tan Sri Datuk Ibrahim ('TSI') had engaged the legal services of the defendants for numerous corporate, conveyancing and litigation matters. The facts of this case arose whereby Yew Securities Sdn Bhd ('Yew') had obtained two judgments against Safuan Holdings Sdn Bhd ('Safuan') and had thereafter assigned H the monetary judgments against Safuan to U-Meng Holdings Sdn Bhd ('U-Meng') by an agreement dated 9 February 1993. On or about 5 August 1993, TSI acquired the Safuan judgments from U-Meng followed by an agreement which stated that U-Meng's rights and interests in the Safuan judgments were assigned to TSI. I

A As consideration, TSI agreed to transfer 5,100,000 shares in Damansara Realty Bhd ('DRB shares') to U-Meng. *Vide* a deed of assignment dated 17 January 1995, TSI proceeded to execute and register the transfer of the DRB shares in favour of U-Meng. At all material time, TSI engaged the defendants' firm, in particular B the 1st defendant ('DW1') to prepare and handle the agreement, the deed of assignment as well as the transfer. The execution of the agreement and deed of assignment by the plaintiff was witnessed by DW1 as evidenced by his attestation. Based on the legal advice, counsel and representations provided by the C defendants, TSI executed the aforesaid agreement, deed of assignment as well as the transfer. Sometime later, TSI under the belief that the rights and interest in the judgments had been validly assigned, engaged the services of Messrs Zainal Abidin & Co ('ZA') to execute and enforce the judgments against Safuan. D However, on 5 October 1998, the solicitors who prepared the assignment agreement between Yew and U-Meng, Messrs Cheang & Ariff, confirmed that there was in fact no deed of assignment prepared or executed between Yew and U-Meng for the judgments. Hence, this claim by the plaintiff for loss and damages E suffered on the ground that the defendants had breached their duty of care in respect of the assignment of judgments and the transfer of shares. Further, the plaintiff claimed, *inter alia*, that: (i) the defendants failed and/or neglected to take all reasonable steps expected of a solicitor to inspect all the relevant documents to F ensure that U-Meng had the legal right to assign the judgments to the plaintiff and (ii) the defendants failed to exercise due skill and diligence expected of an advocate and solicitor towards ensuring that the assignment was valid. In relation to this, the defendants contended that: (i) they did not breach any duty of G care in tort as they had diligently complied with the practice accepted by the legal profession and (ii) since the alleged loss would have accrued in 1995, the action was time barred since it was filed nine years after the cause of action arose.

H **Held (allowing plaintiff's claim):**

(1) A solicitor's contractual duties to his client may, in some instances, be continuing duties. The limitation period would run from the date when the obligation becomes impossible of I performance or when the client elects to treat the continued non-performance as a repudiation of the contact. The claim

was not time barred as TSI only knew that there was no valid assignment when it was confirmed by Messrs Cheang & Ariff that there was in fact no deed of assignment prepared or executed between Yew and U-Meng for the judgments. Hence, the cause of action only arose upon realization of the non-existence of a valid assignment and not in 1995. (paras 13 & 14)

(2) To succeed in the tort of negligence against the solicitor, it is incumbent on the client to establish that: (i) the solicitor owes the client a duty of care; (ii) there is a breach of that duty by the solicitor; (iii) the client has thereby suffered damage and (iv) the damage is not too remote. (para 15)

(3) TSI and the defendants had a close business relationship and TSI considered the defendants, in particular DW1, as his trusted business and legal *confidante*. The defendants, as TSI's legal advisers, were bound to warn their client of the risks involved. It is the solicitor and not the client who has the better opportunity to assess and evaluate the gravity or remoteness of the risk involved in a particular transaction and it is the solicitor who has the necessary expertise to analyse and guard against the risk. As such, the defendants had breached that duty of care. (paras 17 & 35)

(4) Where the solicitor is in breach of his contractual duty to his client, or where he fails to use proper care and as a result his client suffers loss, he is liable in damages even if the claim in negligence was purely for financial loss. In this case, there was a breach of duty by the defendants and as a result, the plaintiff suffered loss and damages. (paras 38 & 40)

[The defendants were ordered to pay the plaintiff RM50,000 as damages.]

Case(s) referred to:

Caparo Industries Plc v. Dickman and Others [1990] 1 All ER 568 ***(refd)***

County Personnel (Employment Agency) Ltd v. Alan R Pulver & Co (a firm) [1987] 1 All ER 289 ***(refd)***

Edward Wong Finance Co Ltd v. Johnson Stokes & Master (a firm) [1984] 1 AC 296 ***(refd)***

Lamphier v. Phipos [1883] 8 Car ***(refd)***

Maelstrom Resources Sdn Bhd & Anor v. Shearn Delamore & Co And Another Case [2007] 1 CLJ 50 HC ***(refd)***

Messrs Yong & Co v. Wee Hood Teck Development Corp Ltd (1) [1984] 1 CLJ 353; [1984] 1 CLJ (Rep) 251 FC ***(refd)***
Swamy v. Matthews & Anor [1967] 1 LNS 174 FC ***(refd)***

Other source(s) referred to:
Halsbury's Laws of England: The Law of Solicitor's Negligence, para 152, 4th edn
The Solicitors' Journal, vol 112-1968, p 842

For the plaintiffs/appellants - David Lingam (Deepinder Kaur & Kamaldip Kaur with him); M/s David Lingam & Co
For the defendants/respondents - Chan Kok Keong (SK Cheong & Jane M Pragasam with him); M/s Ho-Noecker & Pragasam

Reported by Kumitha Abd Majid

JUDGMENT

Hasnah Mohammed Hashim JC:

The Claim

[1] The plaintiff's claim is for loss and damage suffered in the sum of RM5,100,000 on the ground that the 1st and 2nd defendants had breached their duty of care in tort, in respect of the assignment of judgments and transfer of shares. Further, the defendants failed and/or neglected to take all the reasonable steps expected of a solicitor to inspect all the relevant documents to ensure that U Meng Holdings Sdn Bhd (U-Meng) had the legal right to assign the judgments to the plaintiff as well as failing and/or neglecting to verify the representations by U Meng and to take all the necessary measures to inspect the relevant documents. Finally, the defendants failed to exercise due skill and diligence expected of an advocate and solicitors towards ensuring that the assignment was valid.

[2] The claim is denied by the defendants on the ground that the 1st and 2nd defendant did not breach any duty of care, in tort as they had diligently complied with the practice accepted by the legal profession.

[3] The plaintiff claims as against the 1st and 2nd defendants jointly and severally are as follows:

(a) RM5,100,000 being the value of the DRB shares transferred to U-Meng; and

(b) General damages for the loss of the DRB shares.

[4] Before the case was set down for trial, the plaintiff passed away on 15 June 2010 and was substituted by his widow and his daughter as administrators of his estate.

Background

[5] The late Tan Sri Ibrahim (TSI) was a prominent businessman in the early 1980s. The defendants are both advocates and solicitors practicing under the name and style of Messrs Megat Najmuddin & Leong. The plaintiff had from time to time since the early 1980s engaged the legal services of the 1st and 2nd defendants for numerous corporate, conveyancing and litigation matters. The defendants and TSI had a longstanding business relationship and were also good friends as confirmed by the evidence of PW1 (the daughter) and Madam Mok Yin (PW3) TSI's secretary and personal assistant for more than 20 years as well as DW1 (the first defendant) himself.

[6] Yew Securities Sdn Bhd (Yew) had obtained two judgments against Safuan Holdings Sdn Bhd (Safuan) at the High Court Ipoh. Yew owed U-Meng Holdings Sdn Bhd. U-Meng was holding debentures issued by Yew. Yew then assigned the monetary judgments against Safuan Holdings Sdn Bhd (Safuan) to U-Meng by an agreement dated 9 February 1993.

[7] On or about 5 August 1993, TSI acquired the Safuan judgments from U Meng. TSI entered into an agreement with U Meng dated 5 August 1998 agreeing to the following:

(i) That U Meng rights and interests in the Safuan judgments (purportedly assigned from Yew) is assigned to TSI.

(ii) As consideration, TSI agreed to transfer 5,100,000 shares in Damansara Realty Bhd. (DRB shares) with a par value of RM1 only per share to U Meng. By a deed of assignment dated 17 January 1995, he then proceeded to execute and register the transfer of the DRB shares in favour of U Meng. On or about October 1994, the DRB Shares Certificate were duly handed to U Meng.

[8] At all material time, TSI had engaged the defendant's firm Messrs Megat Najmuddin, in particular the 1st defendant, to prepare and handle the agreement, the deed of assignment as well as the transfer. The execution of the agreement and the deed of assignment by the plaintiff were witnessed by the 1st defendant as evidenced by his attestation. Based on the legal advice, counsel and representations provided by the defendants TSI proceeded to enter and execute the aforesaid agreement, deed of assignment as well as transfer.

[9] Sometime in 1996, TSI under the belief that the rights and interest in the judgments had been validly and legally assigned, engaged the services of Messrs Zainal Abidin & Co. (ZA) to execute and enforce the judgments against Safuan. In response to the enforcement and execution proceedings taken out by TSI, Safuan challenged the validity of the assignments of the judgment from Yew to U Meng. On 6 February 1996, ZA issued a letter of demand to Safuan demanding payment of the judgment debts (P5). On 5 October 1998, the solicitors who had prepared the assignment agreement between Yew and U Meng, Messrs Cheang & Ariff, confirmed that there was in fact no deed of assignment prepared or executed between Yew and U Meng for the judgments (P14). Apparently the judgments had never been effectively assigned by Yew to U Meng. TSI then withdrew the enforcement proceedings against Safuan.

[10] On 12 October 2001 TSI commenced an action at the High Court of Ipoh (22-200-2001) against U-Meng as the 1st defendant and Foong Weng Yew, the MD of Yew claiming damages for breach of contract.

The High Court Of Ipoh (22-200-2001)

[11] On 23 June 2003, the High Court upheld the decision of the registrar to strike out the claim. However, on 14 May 2005, the Court of Appeal allowed the appeal filed by TSI (P15). On 20 May 2011 consent judgment was entered whereby the defendants in that suit agreed to pay RM6 million by six monthly instalments to the estate of TSI as full and final settlement (P16).

Limitation

[12] The learned counsel for the defendants submitted that the alleged loss would have accrued on 15 May 1995. Therefore it is contended that the writ is time barred as it was filed nine years after the cause of action arose.

[13] A solicitor's contractual duties to his client may, in some instances, be continuing duties. The limitation period would run from the date when the obligation becomes impossible of performance or when the client elects to treat the continued non-performance as a repudiation of the contract.

[14] The writ is not time barred as TSI only knew that there was no valid assignment when it was confirmed by Messrs Cheang and Ariff that there was in fact no deed of assignment prepared or executed between Yew and U Meng for the judgments. The cause of action therefore only arose upon realization of the non-existence of a valid assignment and not in 1995 as contended by the defendants. The date mentioned in prayer 27(c) of the statement of claim is for the purpose of calculating interest and not to determine when the cause of action arose.

Whether There Was A Breach Of The Duty

[15] To succeed in the tort of negligence against the solicitor, it is incumbent on the client to establish that:

(1) the solicitor owes the client a duty of care;

(2) there is a breach of that duty by the solicitor;

(3) the client has thereby suffered damage; and

(4) the damage is not too remote.

[16] Barakbah LP (as he then was) in *Swamy v. Matthews & Anor* [1967] 1 LNS 174, at p. 139, applied *Lamphier v. Phipos* [1883] 8 Car & p. 475: 173 ER 581 where Tindal CJ laid down this principle:

> Every person who enters into a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill. He does not undertake, if he is an attorney, that at all events you shall gain your case, ... nor does he undertake to use the highest degree of skill ... but he undertakes to bring a fair, reasonable and competent degree of skill. (See also Lord Fullerton in *Cooks v. Falconer's Representatives* [1850] 13D, p. 157, at p. 172) ...

[17] In the instant case, TSI and the defendants had a close business relationship and TSI considered the defendants in particular DW1, Leong Tuck On, as his trusted business and legal *confidante*. This was confirmed in evidence by TSI's daughter

Aishaf Falina (PW1) and his personal assistant, Madam Mok Yin (PW3). The 1st defendant could go in and out of TSI's office at his pleasure as it were as confirmed by PW3, during cross-examination:

> Whenever Tan Sri execute any document he will let me know. Mr. Leong has the privilege to enter Tan Sri's room as and when ... they have been friends for a long long time ...

[18] PW3 also gave evidence that even though she may not be present at all the meetings or discussions, TSI would tell her what was discussed at that meeting or discussion. She also gave evidence that TSI would normally read the essential parts of the documents when his lawyers briefed him. When P3 was produced before her, she identified and acknowledged that it was the deed of assignment. She also confirmed that the said document was in fact prepared by Messrs Megat Najmuddin:

> Q: Re: Q/A9.
>
> Re: page 10A (P3).
>
> A: Yes I recognized the document ... this is the Deed of Assignment.
>
> Q: Who prepared this Deed of Assignment?
>
> A: This would be handled by Megat Najmuddin.
>
> Q: Why do you say so?
>
> A: Mr. Leong was the one always bringing the documents to Tan Sri.
>
> Q: Can you confirm this?
>
> A: Whenever Tan Sri execute any document he will let me know.

[19] PW3 was TSI's personal assistant for more than 30 years. She had worked closely with TSI and as his personal assistant, would have personal knowledge of the facts that she had testified. I have no reason to doubt her credibility and there is absolutely no reason for PW3 to lie or give evidence otherwise.

[20] It has been admitted by the defendants in their statement of defence that they were appointed by TSI. The defendants had also stated in their statement of defence that they had prepared the agreement and had given all the necessary advice relating to the agreement. Paragraph 5 of the statement of defence states that:

> Setakat mana bahawa Plaintif telah mengupah Megat Najmuddin Leong untuk menyediakan Perjanjian tersebut, perenggan 10 Penyataan Tuntutan dinafikan. Terutama sekali Defendan-defendan menyatakan bahawa Defendan-defendan telah memberi segala nasihat yang patut kepada Plaintif mengenai Perjanjian tersebut.

[21] Paragraph 6 of the same statement of defence further states,

> Defendan-defendan menegaskan bahawa segala terma-terma di dalam Perjanjian tersebut telah diterangkan dan dipersetujui oleh Plaintif, terutama sekali, Plaintif telah mengesahkan bahawa beliau telah membuat segala pertanyaan penuh [full inquiry] kepada Penghakiman tersebut dan telah bersetuju untuk membeli Penghutangan tersebut berdasarkan kepada penyelidikan dan pencarian beliau sendiri.

[22] Therefore, the terms of the agreement was explained by the defendants to TSI. DW1 gave evidence that they had merely prepared the documents as instructed. Being experienced solicitors, it is incumbent upon the defendants to ensure that their client's interest is taken care of and protected.

[23] In the instant case, DW1 admitted during cross examination that he was retained to prepare the documents relating to the assignment. However, when he was further asked during cross-examination whether his firm prepared the documents DW1 denied:

> Q: The Agreement was prepared by your firm?
>
> A: No.

[24] DW1 went further to explain that Mr. Foong's lawyers and not his firm prepared it. When DW1 was referred to the statement of defence and was asked why it is stated that the defendants were appointed to prepare the documents. DW1 replied:

> We were witness to this ... we didn't prepare it.

[25] When he was asked if his role was not confined to merely attestation of his signature, DW1 answered:

A: Correct.

[26] The inconsistent evidence of DW1 severely dented his credibility as a witness.

[27] The House of Lords in *Caparo Industries Plc v. Dickman and others* [1990] 1 All ER 568 held:

> The three criteria for the imposition of a duty of care were foreseeability of damage, proximity of relationship and the reasonableness or otherwise of imposing a duty. In determining whether there was a relationship of proximity between the parties the court, guided by situations in which the existence, scope and limits of a duty of care had previously been held to exist rather than by a single general principle, would determine whether the particular damage suffered was the kind of damage which the Defendant was under a duty to prevent and whether there were circumstances from which the court could pragmatically conclude that a duty of care existed.

[28] In *Halsbury's Laws of England: The Law of Solicitor's Negligence*, para. 152, 4th edn., (Reissue) the liability of negligence is explained as follows:

> A solicitor holds himself out to his clients as having adequate skill and knowledge properly to conduct all business that he undertakes, whether contentious or non-contentious. He owes a duty to his client both in contract and in tort, and he may be liable to a third person for the tort of negligence. Where the solicitor is in breach of his contractual duty to his client, or where he fails to use proper care and his client or third person, where he owes a duty of care to that third person, suffers loss as a result, he is liable in damages even if the claim in negligence is for purely financial loss. The solicitor's contractual duties to his client may, in some instances, be continuing duties, so that the limitation period runs from the date when the obligation becomes impossible of performance or when the client elects to treat the continued non-performance as a repudiation of the contract.

[29] A solicitor's liability towards his client lies both in contract and in tort. A solicitor's contractual duty to a client as stated by the Federal Court in *Messrs Yong & Co v. Wee Hood Teck Development Corp Ltd (1)* [1984] 1 CLJ 353; [1984] 1 CLJ (Rep) 251 is as follows:

> The principle applicable in a case of this nature as rightly applied by the learned Judge is that while the duty of a solicitor is directly related to the confinement as the retainer, it is the incident of that contractual duty that he has to consult his client on all questions of doubt which do not fall within the express or implied discretion left to him. It is also his duty to keep his client informed to such extent as may be necessary according to the same criteria ... *Midland Bank Trust and Groom v. Crocker (supra)* ...

[30] With regard to a solicitor's liability in tort to his client the Federal Court in the same case stated:

> The liability of a solicitor may be viewed in two aspects. At common law the retainer imposes upon him an obligation to be skilful and careful and for failure in contract for negligence whether he is acting for reward or gratuitously. On the other hand, like any other individual, a solicitor is liable for his wrongful acts and if the circumstances justify the charge, he may be made liable to his client in tort. (See *Halsbury's Laws of England*, Third Edition Volume 36 page 96, paragraph 131). He owes a duty not to injure his client by failing to do that which he had undertaken to do and which his client has relied on him to do. (*Midland Bank Trust Co. Ltd. (supra)*).

[31] Kang Hwee Gee, J (as he then was) in *Maelstrom Resources Sdn. Bhd. & Anor v. Shearn Delamore & Co And Another Case* [2007] 1 CLJ 50, a High Court case involving a negligence claim against a patent agent referred to the Court of Appeal case of *Buckland v. Mackesy*, The Solicitors' Journal vol. 112-1968, p. 842 where Harman LJ said:

> ... neither professional man could be proud of his part in the present case. The plaintiff contended that the solicitor was negligent because he allowed or advised the plaintiff to exchange contracts when he knew that the plaintiff had not yet obtained a mortgage. But there was no duty on a solicitor to ensure that his client had obtained a mortgage before exchanging contracts: he fulfilled his duty if he warned the client of the risk which the client incurred.

[32] His Lordship also referred to the Court of Appeal case, *Boyce v. Rendalls* [1983] vol. 268 Estates Gazette p. 269 at p. 272:

A Secondly, having advised correctly on those contemplated arrangements, he had then drafted two grazing agreements and both of them, for the reasons I have indicated, were effective to bring them within the proviso to section 2(1) of the 1948 Act. It follows, submitted Mr. Walker, that it cannot be said that Mr. Pedrick was in any way negligent. Mr. Price did not seek to say B that that general approach was unsound, but he added this rider: that, if, in the course of taking instructions, a professional man like a land agent or a solicitor learns of facts which reveal to him as a professional man the existence of obvious risks, then he should do more than merely advise within the strict limits of his C retainer. He should call attention to and advise upon the risks. I accept that as a general proposition of law.

[33] The case of *County Personnel (Employment Agency) Ltd v. Alan R Pulver & Co (a firm)* [1987] 1 All ER 289 at p. 295 was also referred: D

It seems obvious that legal advice, like any other communication, should be in terms appropriate to the comprehension and experience of the particular recipient. It is also, I think, clear that in a situation such as this the professional man does not E necessarily discharge his duty by spelling out what is obvious. The client is entitled to expect the exercise of a reasonable professional judgment. That is why the client seeks advice from the professional man in the first place. If in the exercise of a reasonable professional judgment a solicitor is or should be alerted to risks which might elude even an intelligent layman, then plainly F it is his duty to advise the client of these risks or explore the matter further.

and at p. 296:

G These reflections involve no element of valuation, on which a solicitor is plainly unfitted to advise. They are reflections which, in my judgment, would and should occur to a reasonably careful and competent solicitor called on to consider and advise on this clause against the background I have described. Having done so, he would and should have advised the plaintiff that it was, on H existing information, impossible to say how the clause would operate in practice, but that its operation might to a greater or lesser extent be disadvantageous to the plaintiff, that unless both initial rents were known and investigated and found to be at open market levels the risk of disadvantage could not, on the proposed wording, be eliminated and that, as matters stood, the plaintiff I should not consider entering into a lease which contained this

> clause. Distasteful though it is to make a finding of negligence against a dead man who cannot defend himself, the inescapable fact is that Mr. Rose did not give this advice or anything like it and, in my view, he was negligent in failing to do so.
>
> ... This explanation was not itself entirely accurate, if the head lease rent was below the open market level, but, more importantly, it did nothing to alert Mrs. Feldman to the possible risks I have mentioned. The deputy judge found that Mr. Rose gave no further or fuller explanation, but I (unlike the judge) think he was bound in law to do so. I cannot accept the distinction drawn between legal consequences and financial implications, because in this case the significance of the legal consequences lay in the financial implications. Even accepting that Mrs. Feldman was not a naive innocent in the commercial world, I regard this as a classic case in which the professional legal adviser was bound to warn his client of risks which should have been apparent to him but would, on a simple reading of the clause, have been most unlikely to occur to her.

[34] In the Privy Council case of *Edward Wong Finance Co. Ltd. v. Johnson Stokes & Master (a firm)* [1984] 1 AC 296 at p. 307:

> Such a conclusion would not be unexpected, because it is the solicitor and not the client who has the better opportunity to assess the gravity or remoteness of the risk involved in a particular case, and it is the solicitor and not the client who has the necessary expertise to analyse and guard against the risk.

[35] TSI may have been an experienced businessman and legally qualified but the defendants as his legal advisers were bound to warn their client of the risks involved. It is the solicitor and not the client who has the better opportunity to assess and evaluate the gravity or remoteness of the risk involved in a particular transaction and it is the solicitor who has the necessary expertise to analyse and guard against the risk. Applying the principles of law enunciated by the cases aforementioned, I find that the defendants have breached that duty of care. By not providing the legal advice to TSI, that the defendants owe a duty of care as advocates and solicitors to TSI whilst preparing the deed of assignment.

Duplicity Of Proceedings

[36] It is submitted by the defendants that there is duplicity of claim ie, the Ipoh High Court claim 22-200-2001 between TSI and U-Meng Holdings and Foong Weng Yew and the instant case.

[37] This court has carefully perused the facts and is of the considered view that there is no duplicity of proceedings. The claim before this court is very distinct and separate as it is for professional negligence against the solicitors advising TSI. The Ipoh High Court case is a claim against U Meng for breach of contract.

Whether TSI Suffered Damage As A Result Of The Defendants' Breach

[38] Where the solicitor is in breach of his contractual duty to his client, or where he fails to use proper care and his client suffers loss as a result, he is liable in damages even if the claim in negligence is purely for financial loss.

[39] The plaintiff contended that they have suffered loss and damages due to the failure and negligence of the defendants in ensuring that there was a valid and effective deed of assignment between Yew and U Meng. TSI commenced the Ipoh suit against U Meng and Foong Weng Yew for damages for breach of contract and had recovered the monies for the transfer of shares amounting to RM5.1 million when a settlement was reached between the parties.

[40] In the instant case, there was a breach of duty by the defendants and as a result, the plaintiff suffered loss and damages.

[41] On the evidence as a whole and on a balance of probabilities, I find, upon findings of fact, that the plaintiff has established his claim against the defendant. However, even though the suit is separate and distinct this court cannot ignore the fact that a consent judgment was entered between the estate and U Meng. Therefore this court hereby order that the defendants pay to the plaintiff RM50,000 as damages to the plaintiff. The said amount of damages is sufficient as a finding of negligence against the defendants, by itself will leave an indelible mark on their professional careers.